

Department of Veterans Affairs

§ 3.257

38 U.S.C. 1521 solely because the veteran's annual income exceeds the applicable maximum income limitation in 38 U.S.C. 1521 (b)(3) and (c)(3); or

(2) Pension payable under 38 U.S.C. 1521 to a veteran in need of regular aid and attendance is discontinued solely because the veteran's annual income exceeds the applicable maximum income limitation in 38 U.S.C. 1521 (b)(3) or (c)(3); and

(3) The veteran's annual income exceeds the applicable maximum income limitation in 38 U.S.C. 1521 (b)(3) or (c)(3) by an amount not greater than the amount specified in 38 U.S.C. 1521 (d)(2).

CROSS REFERENCES: Basic pension determinations. See § 3.314. Determination of permanent need for regular aid and attendance and "permanently bedridden". See § 3.352.

[28 FR 30, Jan. 1, 1963, as amended at 40 FR 16065, Apr. 9, 1975; 41 FR 15411, Apr. 13, 1976; 41 FR 56803, Dec. 30, 1976; 44 FR 45935, Aug. 6, 1979; 61 FR 20727, May 8, 1996; 62 FR 5529, Feb. 6, 1997]

§§ 3.253–3.255 [Reserved]

§ 3.256 Eligibility reporting requirements.

(a) *Obligation to report changes in factors affecting entitlement.* Any individual who has applied for or receives pension or parents' dependency and indemnity compensation must promptly notify the Secretary of any change affecting entitlement in any of the following:

- (1) Income;
- (2) Net worth or corpus of estate;
- (3) Marital status;
- (4) Nursing home patient status;
- (5) School enrollment status of a child 18 years of age or older; or

(6) Any other factor that affects entitlement to benefits under the provisions of this part.

(b) *Eligibility verification reports.* (1) For purposes of this section the term eligibility verification report means a form prescribed by the Secretary that is used to request income, net worth (if applicable), dependency status, and any other information necessary to determine or verify entitlement to pension or parents' dependency and indemnity compensation.

(2) VA will not require old law or section 306 pensioners to submit eligi-

bility verification reports unless the Secretary determines that doing so is necessary to preserve program integrity.

(3) Except for a parent who has attained 72 years of age and has been paid dependency and indemnity compensation during two consecutive calendar years, the Secretary shall require an eligibility verification report from individuals receiving parents' dependency and indemnity compensation under the following circumstances:

(i) If the Social Security Administration has not verified the beneficiary's Social Security number and, if the beneficiary is married, his or her spouse's Social Security number.

(ii) If there is reason to believe that the beneficiary or, if the spouse's income could affect entitlement, his or her spouse may have received income other than Social Security during the current or previous calendar year; or

(iii) If the Secretary determines that an eligibility verification report is necessary to preserve program integrity.

(4) An individual who applies for or receives pension or parents' dependency and indemnity compensation as defined in §§ 3.3 or 3.5 of this part shall, as a condition of receipt or continued receipt of benefits, furnish the Department of Veterans Affairs an eligibility verification report upon request.

(c) If VA requests that a claimant or beneficiary submit an eligibility verification report but he or she fails to do so within 60 days of the date of the VA request, the Secretary shall suspend the award or disallow the claim.

(Authority: Sec. 306(a)(2) and (b)(3), Pub. L. 95-588, 92 Stat. 2508-2509; 38 U.S.C. 1315(e))

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0101 and 2900-0624)

[63 FR 53595, Oct. 6, 1998, as amended at 66 FR 56614, Nov. 9, 2001; 73 FR 40466, July 15, 2008]

§ 3.257 Children; no surviving spouse entitled.

Where pension is not payable to a surviving spouse because his or her annual income exceeds the statutory limitation or because of his or her net worth, payments will be made to or for

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the child or children as if there were no surviving spouse.

[62 FR 5529, Feb. 6, 1997]

§§ 3.258–3.259 [Reserved]

§ 3.260 Computation of income.

For entitlement to pension or dependency and indemnity compensation, income will be counted for the calendar year in which it is received.

(a) *Installments.* Income will be determined by the total amount received or anticipated during the calendar year.

(b) *Deferred determinations.* Where there is doubt as to the amount of the anticipated income, pension or dependency and indemnity compensation will be allowed at the lowest appropriate rate or will be withheld, as may be in order, until the end of the calendar year when the total income received during the year may be determined.

(c) *Proportionate income limitations; excess income.* A proportionate income limitation will be established under the conditions set forth in paragraph (d) of this section except where application of a proportionate income limitation would result in payment of a lower rate than would be payable on the basis of income for the full calendar year.

(d) *Proportionate income limitations; computation.* Income limitations will be computed proportionately for the purpose of determining initial entitlement, or for resuming payments on an award which was discontinued for a reason other than excess income or a change in marital or dependency status. A proportionate income limitation will be established for the period from the date of entitlement to the end of that calendar year. The total amount of income received by the claimant during that period will govern the payment of benefits. Income received prior to the date of entitlement will be disregarded.

(e) *Proportionate income limitations; spouse.* In determining whether proportionate computation is applicable to a claim under Pub. L. 86-211 (73 Stat. 432), the total income for the calendar year of entitlement of both veteran and that of the spouse available for use of

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the veteran will be considered. If a proportionate income limitation is then applicable, it will be applied to both the veteran's and the spouse's income. The spouse's income will not be included, however, where his or her total income for the calendar year does not exceed \$1,200.

(f) *Rate changes.* In years after that for which entitlement to pension or dependency and indemnity compensation has been established or reestablished as provided in paragraph (d) of this section, total income for the calendar year will govern the payment of benefits. Where there is a change in the conditions of entitlement because of a change in marital or dependency status, entitlement for each period will be determined separately. For the period when the claimant was married or had a dependent, the rate payable will be determined under the annual income limitation or increment applicable to a claimant who is married or has a dependent. For the period when the claimant was unmarried or without a dependent, the rate payable will be determined under the annual income limitation or increment applicable to a claimant who is not married or has no dependent. Since these determinations will be based on total income for the calendar year, it is not material whether such income was received before or after the change of status.

(g) *Fractions of dollars.* In computing a claimant's annual income a fraction of a dollar will be disregarded for the purpose of determining entitlement to monthly payments of pension and dependency and indemnity compensation.

(Authority: 38 U.S.C. 1315(g)(2); 1503(b))

[28 FR 30, Jan. 1, 1963, as amended at 29 FR 2944, Mar. 4, 1964; 37 FR 6677, Apr. 1, 1972; 40 FR 16066, Apr. 9, 1975]

§ 3.261 Character of income; exclusions and estates.

The following factors will be considered in determining whether a claimant meets the requirements of §§ 3.250, 3.251 and 3.252 with reference to dependency, income limitations and corpus of estate:

(a) *Income.*